

REMARKS/ARGUMENTS

35 USC § 112, First Paragraph

The Examiner has rejected Applicant's Specification as not being consecutively numbered. Applicant assumes that the Examiner is referring to the figure numbers for the drawings. Applicant has reformatted the drawings so that they appear in consecutive order. No changes have been made to the drawings except for the order in which they appear.

35 USC § 112, Second Paragraph

The Examiner has rejected Claims 1 and 34 as being indefinite because of the words "substantially parallel." Applicant has amended Claims 1 and 34 so that they no longer contain the limitation "substantially parallel."

35 USC § 102(b)

Reconsideration and allowance are requested of Claims 1, 34, and 35 which the Examiner has rejected under 35 USC §102(b) as being anticipated by Flory and Stefanovsky. Invalidity for anticipation requires that all of the elements and limitations of the claim are found within a single prior art reference. Carella v. Starlight Archery and Pro Line Co., 804 F.2d 135, 138, 231 USPQ 644, 646 (Fed.Cir.1986). There must be no difference between the claimed invention and the reference disclosure, as viewed by a person of ordinary skill in the field of the invention. Scripps Clinic & Research Foundation v. Genentech, Inc., 927 F.2d 1565, 1576 (C.A. Fed. 1991).

Claim 1

Applicant's Claim 1 claims that "the nose piece can move from the first position to the second position . . . without altering the position of the shields" This limitation is patently distinguishable from all prior art references of which Applicant is aware, including the cited references. The nose piece in the cited prior art references (reference number 40 in Stefanovsky and reference number 10 in Flory) may be removable and adjustable; however, in contrast to Applicant's Claim 1, Applicant submits that movement of the nose pieces in the cited references is for the purpose of altering the position of the shields so they adjust to fit different sized faces. Stefanovsky states, "an adjustable nose bridge strap 40 attaches to the nose bridge connector 25 at each end through any one of a plurality of connection holes 42. The bridge strap 40 connects the two eye cups 15 and maintains the eye cups a selected distance from each other." (Stefanovsky Column 3, Lines 15-20). Likewise, Flory states, " [t]he nosepiece 10 . . . is a simple, resilient piece of rubber tubing that can be varied in length according to the size of the wearers nose bridge and face 17. The tubing 10 is removable and adjustable by varying its length through selection of the appropriate sized piece." (Flory Column 4, Lines 9-18).

The above quoted language from both Flory and Stefanovsky illustrates that the nose piece in both of these references is an adjustment means adapted to change the position of the eye cups to fit faces of different size. In contrast, the nose piece in Applicant's claimed invention is adapted to move from a first position to a second position without changing the position of the eye shields. This is desirable because it allows a doctor or other specialist to move the nose piece during a procedure without

fear that movement of the nose piece might accidentally move the shields on the patient's face, which could allow radiant energy to inadvertently pass under the shields and into the patient's eyes.

Applicant has amended Claim 1 to read, "the nose piece can move from the first position to the second position while the device is covering the patient's eyes without altering the position of the shields over the patient's eyes." Applicant respectfully submits that this limitation is not disclosed in any of the cited prior art references. As discussed above, the nose pieces in Flory and Stefanovsky may be adjusted for the purpose of adjusting the relative position and fit of the eye shields; however, neither Flory nor Stefanovsky disclose or suggest that their nose pieces can be adjusted "while the device is covering the patient's eyes."

The nose pieces in Flory and Stefanovsky are fixed in one position while the goggles are being worn by the user. To this end, Flory states, "[t]he [nose piece] 10 is removable and adjustable by varying its length through selection of the appropriate sized piece." (Flory Column 4, Lines 16-18). This suggests that in order to adjust the nose piece in Flory, the entire nose piece must be removed and replaced with a different sized nose piece. In contrast, the nose piece in Applicant's claimed invention is movable while the device is being worn by the user. This allows the doctor or other specialist to move the nose piece during a procedure if the nose piece is in the way. For example, if the doctor needs to work on a patient's nose, the nose piece in Applicant's claimed invention can simply be moved upward toward the patient's forehead or downward

toward the patient's chin without altering the position of the eye shields over the patent's eyes.

Claims 34 and 35

Applicant respectfully submits that in the April 5, 2005 Office Action the Examiner indicated that Claims 11 and 13 would be allowable if rewritten in independent form. Applicant rewrote these claims in independent form as Claims 34 and 35 in the Office Action Response received by the United States Patent and Trademark Office on July 8, 2005. Applicant submits that these claims are allowable.

Applicant's Claim 34 claims a mounting comprising "a ball and a socket that together form a ball and socket joint for connecting the nose piece to the shield." Applicant submits that none of the cited prior art references disclose a "ball and socket joint." Further, in the current Office Action (8-4-05), the Examiner does not cite any of the prior art references as disclosing "a ball and socket joint." The ball and socket joint of Applicant's claimed invention provides a significant advantage over all other goggles of which Applicant is aware because it allows nearly universal adjustability of the nose piece while still allowing restricted movement of the shields.

Therefore, Claim 34 should be allowable. Claim 35 is dependent on Claim 34 and is therefore allowable for the same reasons.

Conclusion

It is respectfully submitted that this response places Applicant's application in condition for allowance, and therefore further and favorable action on this application is requested. If for any reason the Examiner has any questions about the claims or the

statements made in this response, Applicant's attorney respectfully requests the Examiner to contact Applicant's attorney by telephone to set up an interview. It is believed that such an interview will be helpful in placing the application in condition for allowance.

Respectfully submitted,

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I hereby certify that this correspondence is being deposited with the United States Postal Service as First Class Mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on October 11, 2005.


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